

## **REMARKS**

The Office Action of July 24, 2006 has been received and considered. Claims 1-33 are pending. Reconsideration of the application in view of the following remarks, and allowance of the pending claims is respectfully requested. Each of the Examiner's rejections is discussed below.

### **Section 112**

Claims 1-33 have been rejected under 35 U.S.C. § 112, second paragraph, on the grounds the phrase "anatomical high points of a user's body" is indefinite. This rejection is respectfully traversed.

Applicant respectfully submits that the phrase in question is definite and would be quite clear to one skilled in the art. One skilled in the art understands that each individual's body inherently has anatomical high points, as well as anatomical low points. The specification provides examples of anatomical high points when discussing the tenting effect that occurs between such anatomical high points in swimwear. Specifically, the specification refers to tenting between the pectoral muscles, between the breasts, and in the lumbar region of the back, which is an anatomical low point with respect to the areas of the back surrounding the lumbar region. (See paragraph 2, lines 5-6). Consequently, one skilled in the art reading the claims in light of the specification would clearly understand the meaning of an anatomical high point of a user's body.

Accordingly, the rejection is improper and should be withdrawn.

### **Section 102**

Claims 1, 2, 4-7, 10-12, 19, 20, 22-25 and 28-30 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,916,755 to Feigenbaum et al ("Feigenbaum"). This rejection is respectfully traversed.

Feigenbaum discloses a swimsuit having a first control panel 16 having an oval shape

positioned over the abdomen of the user and a pair of elongated oval control patches 18, 20 located on the upper rear hip areas. Applicant initially notes that contrary to the assertion in the Office Action, control patches 18, 20 are not positioned in the lumbar region; they are positioned directly on the upper hip areas (See col. 3, lines 4-6).

Feigenbaum does not disclose or make obvious a stretchable piece of material having a size and shape configured to at least partially cover an area of a user's body between anatomical high points of the user's body, as required by independent claims 1 and 19.

Rather than positioning material between anatomical high points, Feigenbaum discloses positioning material directly on anatomical high points, namely, the abdomen and upper hips. Feigenbaum recites that positioning first control panel 16 directly on the abdomen "flattens any bulge in that region" (col. 3, line 7.) Thus, Feigenbaum purposefully positions first control panel 16 on an anatomical high point.

Similarly the control patches 16, 18 are positioned on anatomical high points, namely, the upper hips, such that the buttocks are "firmed and rounded" (col. 3, line 11.). Consequently, Feigenbaum expressly teaches positioning the control panel and control patches on anatomical high points, thereby teaching away from covering an area of a user's body between anatomical high points.

Accordingly, the rejection is improper and should be withdrawn.

### **Section 103**

#### **Feigenbaum and Itagaki**

Claims 8, 9, 13, 17, 26, 27, 31 and 35 have been rejected under 35 U.S.C. § 103(a) over Feigenbaum in view of U.S. Patent No. 5, 033,116 to Itagaki et al. ("Itagaki"). Itagaki is cited as disclosing a triangular shaped material placed between the breasts of a user. This rejection is respectfully traversed.

Itagaki fails to overcome the deficiencies of Feigenbaum noted above. Specifically, Itagaki fails to disclose or make obvious a stretchable piece of material having a size and shape configured to at least partially cover an area of a user's body between anatomical high points of the user's body, as required by independent claims 1 and 19, from which claims 8, 9, 13, 17, 26, 27, 31 and 35 depend. Accordingly, the rejection is improper and should be withdrawn.

#### **Feigenbaum**

Claims 3, 14, 21 and 32 have been rejected under 35 U.S.C. § 103(a) over Feigenbaum. This rejection is respectfully traversed.

As noted above, Feigenbaum does not disclose or make obvious a stretchable piece of material having a size and shape configured to at least partially cover an area of a user's body between anatomical high points of the user's body, as required by independent claims 1 and 19, from which claims 3, 14, 21 and 32 depend. Accordingly, the rejection is improper and should be withdrawn.

#### **Feigenbaum and Kudo**

Claims 15, 16, 33 and 34 have been rejected under 35 U.S.C. § 103(a) over Feigenbaum in view of U.S. Patent No. 4,654,894 to Kudo ("Kudo"). Kudo is cited as disclosing a swimsuit having an additional material in the shape of a diamond with a larger width than height. This rejection is respectfully traversed.

Kudo fails to overcome the deficiencies of Feigenbaum noted above, since Kudo does not disclose or make obvious a stretchable piece of material having a size and shape configured to at least partially cover an area of a user's body between anatomical high points of the user's body, as required by independent claims 1 and 19, from which claims 15, 16, 33 and 34 depend.

Further, Kudo fails to overcome the deficiencies noted in the Office Action. Specifically, Kudo does not disclose or make obvious a substantially diamond shaped form with its sides

curved slightly inwardly, as required by claims 15 and 33. The diamond shape of Kudo clearly has straight edges, with no curve whatsoever. There is no suggestion or motivation in Kudo to form its diamond shape with sides curved slightly inwardly.

Nor does Kudo disclose or make obvious a substantially flattened diamond shaped form, having a width substantially larger than its height, as required by claims 16 and 34. In fact, the diamond shape of Kudo has a height substantially larger than its width, and it does not have a substantially flattened diamond shaped form.

Accordingly, for this reason as well, the rejection is improper and should be withdrawn.

#### **Allowable Claims**

Claims 18 and 36 have been indicated as being allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, second paragraph, and to include all the limitations of the base claim and any intervening claims.

Since independent claims 1 and 19, from which claims 18 and 36 depend, respectively, are believed to be allowable in their present form, as discussed above, claims 18 and 36 are believed to be allowable as well, and an indication to that effect is respectfully requested.

#### **Conclusion**

Consequently, pending claims 1-36 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

Respectfully submitted,

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